

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 323 of 2005
WITH
CIVIL APPLICATION NO.347 of 2005

Smt.Prema Hiralal Pawar .. Appellant

versus

Shri Limbaji Dhulappa Rathod .. Respondents

...

Mr.Vineet B. Naik for the appellant.

Mr.G.S. Godbole for the respondents

CORAM : B.H. MARLAPALLE, J

DATED : 18th October 2005

P.C.:

1. Heard Mr.Naik for the appellant plaintiff
and Mr.Godbole for the respondent defendant.

2. This appeal arises from the order dated 10th
December 2004 passed by the learned 2nd Joint Civil

Judge, Sr.Division at Solapur rejecting the application at Exhibit-5 filed for temporary injunctions, in Special Civil Suit no.127 of 2004. By the said application, the plaintiff had prayed for a restraining order against the defendant from spending or otherwise utilising in any manner an amount of Rs.1,56,76,579/- plus interest thereon during the pendency of the suit. The trial Court recorded a finding that the plaintiff failed to make out a prima facie case regarding her adoption by Shri Dhulappa.

3. There is no dispute that the plaintiff is the real sister of the defendant. The parties belong to Laman community which is recognised as one of the tribal communities in Maharashtra. Dhulappa and Bhasu were the two sons of Bhima Rathod. Dhulappa was married to Rukminibai and the couple did not have a child whereas Bhasu who was married to Jamnabai had daughters as well as sons. The eldest daughter of Bhasu by name Prema was initially adopted by Dhulappa as per the custom of Laman community but the said daughter died and on Prema's demise, Dhulappa and Rukmini Rathod adopted the defendant as well as plaintiff by following the customs of Laman community

and plaintiff became the adopted child of Dhulappa and Rukminibai when she was about 1 year old. She was admitted by Dhulappa in Gandhi Ashram's School as well as Nehru Nagar School at Solapur and in the school record, Dhulappa's name was recorded as her father. The plaintiff got married on 13th May 1977.

4. The land admeasuring 16.88 hectares from Survey no. 321/B and owned by Dhulappa Rathod came to be acquired by the State Government and the said land was allotted to MHADA on 9th February 1983. On 2nd March 19985, Dhulappa expired and he was survived by Rukminibai and the defendant as an adopted son. As per the plaintiff, the defendant was taken in adoption on 12th February 1945 whereas she was taken in adoption in 15th march 1956. The compensation amount to the extent of rs.3,13,53,038/- was received by the defendant and the plaintiff alleges that the defendant denied her share in the said amount. Special Civil Suit no. 127 of 2004 came to be filed for a declaration that the plaintiff has half share in the compensation amount received by the defendant and for direction to pay the amount equivalent to her half share.

5. The reasoning given by the trial Court in dismissing the application at Exhibit-5 is perverse. The trial Court discarded the documents like School Leaving Certificate, Wedding Invitation Card and other documents which clearly show that the plaintiff is the daughter of Dhulappa . As per the trial Court, these documents could not be accepted even for prima facie considerations when the defendant was also claiming to be the adopted son of Dhulappa. The documents placed on record do show that the plaintiff is accepted to be the daughter of Dhulappa and the defendant is the adopted son of Dhulappa. When it was clearly stated that the adoption was as per the customs and practices followed by the community, there was no reason for the trial Court to believe that the daughter could not be adopted when a son was already adopted for the prima facie consideration. No doubt the adoption that has taken place as per the customs and practices of the community will have to be proved by leading oral evidence in addition to the documents those have been brought on record but that by itself would not be a reason to deny protection to the plaintiff moreso when out of the amount of compensation received by the defendant, an amount of Rs.One crore seventy lakhs has been invested by the

defendant in the RBI bonds for a period of 7 years and this investment appears to have been done about two years before. When such an investment is already admitted, it would not be necessary to direct the defendant to deposit the said amount with the trial Court or to submit a bank guarantee.

6. The appeal is therefore disposed of with following directions namely,

a) that the defendant shall not encash or otherwise create any third party interest in the RBI bonds worth Rs.One crore seventy lakhs till the suit is tried and decided and

b) the suit be tried and decided as expeditiously as possible and preferably by 31st May 2006 without being influenced by any observations made in the impugned order.

7. Civil Application does not survive.
Certified copy is expedited.

B.H. MARLAPALLE, J